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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/537,326

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Nile A. Lahr

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EMCH, SCHAFER, SCHAUB & PORCELLO CO

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EXAMINER

MINSKEY, JACOB T

ART UNIT

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/537,326	<b>Applicant(s)</b> LAHR ET AL.	
	<b>Examiner</b> JACOB T. MINSKEY	<b>Art Unit</b> 1791	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 May 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3,5-11,13 and 21-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,5-11,13 and 21-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>03/26/2009</u> .  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. The Examiner acknowledges the amendment to claims 1-3, 5, 11, and 13, as well as the addition of new claims 21-29 and the cancellation of claims 4, 12, and 14-20.

### ***Response to Arguments***

2. The amendments overcome the previously presented claim objections as well as the 112 2<sup>nd</sup> rejections in the prior Office Action, although the amendments do change the scope of the claim by clarifying the size of the gaps in the claim.

3. Applicant's arguments with respect to claims 1-8 and 10-13 have been considered but are moot in view of the new ground(s) of rejection.

4. Applicant traverses the obviousness rejection made on these claims with the arguments that the "vent groove" and "vent holes" taught by Hayata do not read on the claims because the instant application requires the second gaps to be part of the lamina and not the shell of the mold.

5. After further review of the reference, the Examiner finds this argument persuasive. The vent groove of Hayata performs the same function as the instantly claimed invention, but does not do it through the second gaps in the lamina but through the shell of the mold instead.

6. A new ground of rejection that fulfills the new size limitations as well as clearly includes the gaps to be located on the lamina and not the mold will follow this section.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

**10. Claims 1-3, 5-11, 13, and 21-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Masayuki, JP 02-295706 (Already of record).**

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11. Regarding claims 1, 11, and 21, Masayuki teaches tire mold with a tread pattern (see abstract) in which a the tread is machined into the segments (item 3) and gaps are formed to allow the passage of only air to vacate the mold (item 6 and abstract) and then pass through spaces that have a larger cross sectional areas leading out to the back of the layered segments to release the air out of the mold (item 7, abstract, and figures).

12. Masayuki explicitly teaches the size of the first gaps (slits #6) but does not provide explicitly provide a size for the second gaps (spaces #7) other than that the spaces are larger to allow the air to move out of the mold. Masayuki teaches that the first gaps are to be 0.05 mm (equivalently 0.002 inches), see abstract, and that the second gaps will be larger. These teachings would have motivated one of ordinary skill in the art at the time of the invention to determine the optimal values of the second larger gaps through routine experimentation (In re Aller, USPQ 233, SSPA 1955) for the benefit of providing adequate venting form the mold without forming unsightly attachments to the tires.

13. Regarding claims 2, 13, and 22, Masayuki teaches that the first gaps are 0.002 inches (see abstract, 0.05 mm).

14. Regarding claims 3, 5, and 23-24, Masayuki teaches a set of stacked segments to form the molds in the same manner as the instantly claimed invention, but does not provide explicit dimensions of the plates outside of the size of the first gaps (which are within the preferred range of the instantly claimed application). The teachings of Masayuki would have motivated one of ordinary skill in the art at the time of the

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invention to determine the optimal values of the size and lengths of the mold plates through routine experimentation in the absence of showing of criticality (In re Aller, USPQ 233, SSPA 1955).

15. Regarding claims 6-7 and 25-26, Masayuki further teaches that a taper pin (item 12) is utilized to hold the lamina in the proper position (see abstract).

16. Regarding claims 8-9 and 27-28, Masayuki further teaches that the lamina are positioned in segments and then connected to form the tire mold (see abstract). While this explicitly teaches the limitations of a segment mold, the teachings of Masayuki would motivate one of ordinary skill in the art at the time of the invention to move the segments into a "mutual contact state" through any type of mold. There are only a number of movable mold types (segment, claim shell, multi component dies) and it would have been obvious for one of ordinary skill in the art at the time of the invention to utilize a male and female (or claim shell) mold with a reasonable expectation of success (KSR Int'l co V Teleflex., 127 S. Ct 1727, 82 USPQ 2d 1395 (2007)).

17. Regarding claims 10 and 29, Masayuki further teaches that the interior radius edges of the plates produce the pattern of the tire tread (see figure 8).

### ***Conclusion***

18. Applicant's submission of an information disclosure statement under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p) on 3/26/2009 prompted the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS**

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**MADE FINAL.** See MPEP § 609.04(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JACOB T. MINSKEY whose telephone number is (571)270-7003. The examiner can normally be reached on Monday to Friday 7:30-5:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Griffin can be reached on 571-272-1189. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JTM

/Eric Hug/  
Primary Examiner, Art Unit 1791